UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WSG 118
WSG 118
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MEMORANDUM

SUBJECT: Submetering Water Systems

FROM: Cynthia C. Dougherty, Director
Office of Ground Water and Drinking Water

TO: Water Division Directors
Regions I - X

Drinking Water/Ground Water Representatives
Regions I - X

There have been numerous requests for guidance on whether an apartment complex or other similar residential communities (e.g. subdivisions and mobile home parks) which receives water from a public water system (PWS) through a master meter and then resells it to the residents qualifies as a PWS. It has long been and remains the Environmental Protection Agency's (EPA) position that apartment complexes and similar residential communities that sell water to their tenants constitute PWSs and are subject to the Safe Drinking Water Act (SDWA) regulations. However, EPA also recognizes that these PWSs may not require as stringent monitoring as PWSs which do not receive their water from another PWS, and thus States have the flexibility to modify the monitoring requirements for these apartment complexes or similar residential communities.

On March 31, 1997, in response to the above concerns, EPA held a meeting with several stakeholders to discuss the regulatory provisions and the guidance that had already been issued on these subjects. After this meeting, we received a few requests for more clarification to which we responded by individual letters. To make sure that everyone understands the Agency's position and to alleviate any confusion, we have incorporated the substance of our responses into this memorandum. Please share this information with your respective States.

Statutory Requirements

Under Section 1411 of the SDWA, a PWS is subject to regulation unless it is a system which meets all of the following four criteria:

(1) consists only of distribution and storage facilities (and does not have any collection and treatment facilities);
(2) obtains all of its water from, but is not owned or operated by, a public water system to

which the regulations apply;
(3) does not sell water to any person; and
(4) is not a carrier which conveys passengers in interstate commerce.

Assuming that apartment complexes and other similar residential communities meet the criteria enumerated in (1), (2), and (4), the issue is whether or not submetering of water to tenants constitutes selling water within the context of the SDWA.

Interpretation of to "Sell"

We believe that to "sell" should be given broad meaning under the SDWA. Construing the statute this way is consistent with the purpose of the SDWA which is to assure that the water supply systems that serve the public meet minimum national standards for protection of public health to the maximum extent feasible. (House Report No. 93-1185). The House Report further says, in explaining this provision, that Congress intends the primary drinking water regulations to apply to housing developments, motels, restaurants, trailer parks, and other business serving the public if the business in question maintains its own well or water supply and sells water.

A distributor of water for human consumption "sells" water within the meaning of the Act if it charges consumers for the water as a separate item or bills separately for the water it provides. (House Report No. 93-1185). Conversely, if the entity includes the charges for water in the rental fee, then it is not selling water within the context of the Act. It is irrelevant whether water is sold for a profit or not, or whether the distributor is a public or private entity. Thus, it is appropriate to interpret to "sell" to include submetering.

If an apartment building or similar residential community that submeters wants to avoid PWS classification, it would either need to remove the complex's master meter and allow the local water utility to bill the residents directly, or include water usage as part of the monthly rent or fees.

Monitoring Flexibility of "Consecutive" Water Systems

While an apartment complex that submeters is considered a PWS and thus subject to the requirements under the SDWA, it nonetheless may be afforded certain monitoring modifications if it is considered a "consecutive" water system. "Consecutive" water systems are water systems that purchase water from another public water system. Under federal regulations at 40 CFR 141.29, States have the flexibility to modify the monitoring requirements to the extent that the interconnection of the systems justifies treating them as a single system. This flexibility allows States considerable discretion to avoid unnecessary compliance activities for "consecutive" water systems consistent with the public health objectives of the Act. Because we support the practice of submetering to encourage water conservation and to provide an equitable method of distributing costs, we believe that it is appropriate for States to use this flexibility consistent with their

assessment of the need for these "consecutive" systems to conduct additional monitoring to protect the public health of their customers.

If you have any question concerning this guidance, please call Jennifer Melch at (202) 260-7035.